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IN THE

Supreme Court of the United States

October Term, 1972

No. 73-421

RICHARD VEED,

Petitioner,

vs.

EDWARD SCHWARTZKOPF, KERMIT HANSEN, KERMIT WAGNER, ROBERT J. PROKOP, ROBERT L. RAUN, ROBERT KOEFOOT, JOHN G. ELLIOTT, JAMES H. MOYLAN, D. B. VARNER and JAMES H. ZUMBERGE,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Richard Veed prays that a writ of certiorari issue to review the final judgment of the United States Court of Appeals for the Eighth Circuit entered below in the manner hereafter set forth.

OPINIONS BELOW

On July 23, 1973, the United States Court of Appeals for the Eighth Circuit by unreported opinion and decision denied the petition of Richard Veed for rehearing en banc

and denied the petition of Richard Veed for rehearing. (App. A, infra, p. 15). The said Court of Appeals had previously on June 27, 1973 by unreported opinion and decision, and in the absence of oral argument, entered its Order of Affirmance of a judgment of the United States District Court for the District of Nebraska from which petitioner Richard Veed had appealed. (App. B, infra, p. 16). The original unreported Memorandum of Decision (App. C, infra, pp. 17-25) entered January 15, 1973 by the United States District Court for the District of Nebraska sets forth the reasons for the actual unreported Judgment of the Trial Court filed January 15, 1973 appended hereto. (App. D, infra, p. 26).

STATEMENT OF GROUND OF JURISDICTION

The actual judgment of the United States Court of Appeals for the Eighth Circuit sought to be reviewed by the Supreme Court of the United States was dated and entered on June 27, 1973. (App. A, infra, p. 15). The order of the United States Court of Appeals for the Eighth Circuit denying both a rehearing and a rehearing en banc was dated and entered on July 23, 1973. (App. B, infra, p. 16).

This court has jurisdiction to review the judgment in question by virtue of Title 28, United States Code, Section 1254(1).

QUESTIONS PRESENTED

The questions presented for review are as follows:

(1) Is the exercise of a citizen's right to subscribe to or financially support a particular newspaper, or none at all, an expression of the citizen's opinion constitutionally

protected by the freedom of the press and the freedom of speech provisions of the First Amendment of the United States Constitution?

(2) Is the exercise of a citizen's right to join or financially support a particular political association of citizens, or none at all, an expression of the citizen's opinion constitutionally protected by the freedom of speech and freedom of association provisions of the First Amendment of the United States Constitution?

(3) Is the exercise of a citizen's right to financially patronize a particular system of political speakers, or none at all, an expression of the citizen's opinion constitutionally protected by the freedom of speech provisions of the First Amendment of the United States Constitution?

(4) Did the Court below err, contrary to the Constitution of the United States, in sustaining a decision of a United States District Court which did not find a deprivation of constitutional rights per se as a matter of law in a system of financial charges imposed upon a citizen as a condition precedent to his being permitted to attend his own resident state university which denied the citizen the freedom to choose his own newspaper, which denied the citizen the freedom to choose his own political associations, and which denied the citizen the freedom to choose his own political speakers?

CONSTITUTIONAL PROVISIONS AND STATUTES CITED

The First Amendment (Article I) of the United States Constitution states:

Congress shall make no law respecting an establish-

ment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Section 1 of the Fourteenth Amendment (Article XIV) of the United States Constitution, the only section thereof involved herein, provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Civil Rights Act of 1871, and in particular that section thereof now known as Section 1983 of Title 42 of the United States Code, states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Finally, Section 1343 of Title 28, United States Code, provides in pertinent part as follows:

> The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> * * *

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

STATEMENT OF THE CASE

The petitioner, Richard Veed, is an adult citizen of the United States of America and a resident citizen of the State of Nebraska. Respondents are eight regents and two chief administrators of the University of Nebraska, a state educational institution.

Respondents acting under color of state law in their capacities as University of Nebraska officials, but completely apart from any academic requirements for admission, have been and still are requiring petitioner to surrender his freedom to express his political and religious opinions during that part of his life spent outside the classroom in a manner of his own choosing, as a condition precedent to permitting petitioner to attend his own resident state university, by imposing upon him certain mandatory fees for funding three particular extra-curricular political activities for which no academic credit hours can be earned, namely:

(a) subscription and financial subsidy fees to one particular ordinary newspaper known as the "Daily Nebraskan,"

(b) membership and financial subsidy fees to one particular political association of citizens, a pri-

vate Nebraska corporation known as "Association of Students of the University of Nebraska" (ASUN), and

(c) speaking fees, traveling expenses, speakers bureau commission charges, and other financial subsidy fees to one particular procurement system of political speakers known as the "speaker series" of the "Nebraska Union," a Department of the University of Nebraska.

Taking the view that respondent officials of the University of Nebraska have no constitutional authority to interfere with his political and religious life as a citizen lived outside of the academic classrooms of the University of Nebraska, petitioner commenced suit against respondents in the summer of 1972 in the United States District Court for the District of Nebraska.

The basis for federal jurisdiction in the court of the first instance, petitioner's action being one for equitable relief under the Civil Rights Act of 1871, now known as Section 1983 of Title 42 of the United States Code, is found in Section 1343 of Title 28 of the United States Code which specifically authorizes such action in the United States District Court for the District of Nebraska.

In the United States District Court original trial, with regard to Petitioner's main contentions that as a citizen he was free to express his private political and religious convictions within a newspaper forum of his own choosing or none at all, within a political association of citizens forum of his own choosing or none at all; within a system of political speakers forum of his own choosing or none at all, during that part of his life as a citizen spent outside of the academic classroom; the United States District

Judge held to the contrary that petitioner must submit to the exacting of fees from him by respondents to finance a particular newspaper chosen by respondents, not petitioner, to finance a particular political association of citizens chosen by respondents, not petitioner, and to finance a particular system of political speakers chosen by respondents, not petitioner, as a condition of his enrollment at the University of Nebraska. (App. C, infra, pp. 17-25).

Petitioner appealed this adverse trial court decision to the United States Court of Appeals for the Eighth Circuit which summarily affirmed (App. B, infra, p. 16), without hearing oral arguments, the original judgment of the United States District Court for the District of Nebraska, and also denied petitioner's request for rehearing and his request for a rehearing by the United States Court of Appeals for the Eighth Circuit en banc. (App. A, infra, p. 15).

THE CRUCIAL REASON FOR GRANTING THIS WRIT OF CERTIORARI

The United States Court of Appeals for the Eighth Circuit in affirming a decision of the United States District Court for the District of Nebraska in the instant case has decided a federal question in a way in conflict with applicable decisions of the Supreme Court of the United States in the field of freedom of speech rights of citizens attending a state university.

Petitioner respectfully contends that an exercise of the power of supervision of the Supreme Court of the United States is called for in this case due to a failure of the federal courts below to recognize the full import of the decisions of the United States Supreme Court in the field

of freedom of speech rights of citizens attending a state university, especially *Tinker v. Des Moines Community School Dist.*, 393 U. S. 503, 21 L. Ed. 2d 731, 89 S. Ct. 733 (1969), and *Meyer v. Nebraska*, 262 U. S. 390, 67 L. Ed. 1042, 43 S. Ct. 625 (1923).

Citing a half century of decisions commencing with *Meyer v. Nebraska*, 262 U. S. 390, 67 L. Ed. 1042, 43 S. Ct. 625 (1923), the Supreme Court of the United States in a recent decision, *Tinker v. Des Moines Community School Dist.*, 393 U. S. 503, 21 L. Ed. 2d 731, 89 S. Ct. 733 (1969), made it crystal clear that a state educational institution may not revoke or impair the rights of citizens secured by the First Amendment of the United States Constitution, in its opinion found at page 737 of 21 L. Ed. 2d:

> ". . . First Amendment rights, applied in light of the special characteristics of the school environment, are available to . . . students. It can hardly be argued that . . . students . . . shed their constitutional rights . . . at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years . . ."

It is interesting to note at the outset that both the *Meyer* decision and the *Tinker* decision of the United States Supreme Court restrained state educational officials from interfering with constitutional rights of *children* while *inside the classroom*; whereas the facts in the case at bar concern an attempt by state educational officials to interfere with constitutional rights of *adults* while *outside the classroom.*

Thus, the first failing of the courts below in the instant case is the erroneous assumption that a Nebraska university has any authority whatsoever over the political and relig-

ious life of its citizen-students during that part of their lives spent outside the classroom. To understand the depth of this error and the degree to which the instant decision of the United States Court of Appeals for the Eighth Circuit in affirming the trial court stands in clear contradiction to the holdings of the United States Supreme Court in the decisions of *Tinker v. Des Moines Community School Dist.*, 393 U. S. 503, 21 L. Ed. 2d 731, 89 S. Ct. 733 (1969), and *Meyer v. Nebraska*, 262 U. S. 390, 67 L. Ed. 1042, 43 S. Ct. 625 (1923); it is necessary to compare the facts in the *Tinker* case with the case at bar and in turn the startlingly different judicial results. The Supreme Court of the United States held in the case of *Tinker v. Des Moines Community School Dist.*, 393 U. S. 503, 21 L. Ed. 2d 731, 89 S. Ct. 733 (1969), that public school authorities have no constitutional power to force a thirteen year old school girl to remove a black arm band worn in class as a protest against the foreign policy of the United States by virtue of the First Amendment of the United States Constitution. On the other hand, in the case of Petitioner Richard Veed, the United States District Court for the District of Nebraska held (App. C, infra, pp. 17-25), and was summarily sustained by the United States Court of Appeals for the Eighth Circuit (App. B, infra, p. 16), that respondent officials of the University of Nebraska do have the constitutional power to force an adult citizen and resident of Nebraska and a citizen of the United States, during that part of his life spent outside the classroom:

(1) to forfeit his First Amendment rights as to which newspaper, if any, he may wish to subscribe to or financially patronize;

(2) to forfeit his First Amendment rights as to which political associations, if any, he may wish to join or financially patronize; and

(3) to forfeit his First Amendment rights as to which system of political speakers, if any, he may wish to associate himself with or financially patronize,

as the *quid pro quo* for petitioner being permitted to attend his own resident state university, via the imposition of certain mandatory fees exacted from petitioner, as a condition precedent to his matriculation, for the financial patronage of one particular newspaper, one particular political association of citizens, and one particular system of political speakers.

It also appears that the courts below refused to recognize that "educational power" cannot be used to infringe upon the free political and religious choices and decisions of a citizen, as for example in the following five illustrations:

(1) Educational power cannot be used to force a child to take off a black arm band worn in class as a protest against the foreign policy of the United States. *Tinker v. Des Moines Community School Dist.*, 393 U. S. 503, 21 L. Ed. 2d 731, 89 S. Ct. 733 (1969);

(2) Educational power cannot be used to enforce conformity of political or religious behavior. *Meyer v. Nebraska*, 262 U. S. 390, 67 L. Ed. 1042, 43 S. Ct. 625 (1923);

(3) Educational power cannot be used to force a citizen to salute the American flag. *West Virginia Board of Education v. Barnett*, 319 U. S. 24, 87 L. Ed. 1628, 63 S. Ct. 1178 (1943);

(4) Educational power cannot be used to deny citizens the right to form political associations of their own choosing. *Healy v. James*, —— U. S. ——, 33 L. Ed. 2d 266, 92 S. Ct. —— (1972); and

(5) Educational power cannot be used to prevent citizens from distributing their own publications on campus. *Papish v. University of Missouri*, —— U. S. ——, 35 L. Ed. 2d 618, 93 S. Ct. —— (1973).

Petitioner contends that the choice of a United States citizen as to which newspaper he shall subscribe to or financially support, which political associations he shall join or financially support, which system of political speakers he shall financially support, are all private decisions involving the exercise of his political and religious liberty, and are specific EXPRESSIONS OF HIS OWN FREEDOM OF SPEECH; furthermore that the choice not to subscribe to a particular newspaper or not to financially support a particular association or not to finance a particular system of political speakers are also expressions of his own freedom of speech and cannot be forced upon him by any educational authority, due to the bar of the freedom of the press, freedom of speech, and freedom of religion provisions of the First Amendment of the United States Constitution. Freedom to participate in politics in the United States also includes the right NOT to participate in politics if that is the desire of the citizen.

What respondent officials of the University of Nebraska are doing is to deny admission to the university to any Nebraska and United States citizen who refuses to follow the official party line and who refuses to financially patronize the "official" political newspaper selected by these officials, not the citizen, the "official" political association of citizens selected by these officials, not the citizen, and the "official" procurement system of political speakers: thus repeating a constitutional error made fifty years ago in Nebraska and well documented by the Supreme Court of the United States in the *Tinker v. Des Moines Community School Dist.*, 393 U. S. 503, 21 L. Ed. 2d 731, 89 S. Ct. 733 (1969) decision and discussed at pages 740-741 of 21 L. Ed. 2d:

". . . In Meyer v. Nebraska, supra, at 402, 67 L. Ed. at

> 1046, 29 A. L. R. 1446, Mr. Justice McReynolds expressed this Nation's repudication of the principle that a State might so conduct its schools as to 'foster a homogeneous people.' He said:
>
> > 'In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and intrusted their subsequent education and training to official guardian. Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any legislature could impose such restrictions upon the people of a State without doing violence to both letter and spit of the Constitution.' . . ."

Yet that is the very mistake being made by the unique mandatory fee system being forced upon Petitioner by officials of the University of Nebraska. He is forced to surrender complete freedom of choice of newspapers, or he will not attend the University of Nebraska. He is forced to surrender freedom of choice of political associations, or he will not attend the University of Nebraska. He is forced to surrender freedom of choice of political speaker systems, or he will not attend the University of Nebraska.

It is a sad commentary on our times if we have reached the point mentioned by the United States Supreme Court in the decision of *Tinker v. Des Moines Community School Dist.*, 393 U. S. 503, 21 L. Ed. 2d 731, 89 S. Ct. 733 (1969), at page 741 of 21 L. Ed. 2d, where Freedom of expression can only be exercised:

> ". . . in an area that a benevolent government has provided as a safe haven for crackpots . . ."

Petitioner vociferously contends that neither Congress nor the States nor officials of the University of Nebraska may abridge his right to freedom of the press, to freedom of speech, to freedom of association, and to freedom of religion, and that under these guarantees of the First Amendment of the United States Constitution, he cannot be forced to surrender the free choices in his own private political and religious life lived outside the classroom to officials of the University as the price of his attendance. The choice of political and religious forums in this life is a choice for the citizen to make, not an educational entity. Petitioner has the right to choose his own newspaper forum, or none; his own political association forum, or none; his own system of political speakers forum, or none; and these choices cannot be fettered with restrictions on the free exercise of his free speech and the expressions of his political opinion manifested by the newspapers he buys or rejects and the political associations he makes or rejects. His political and religious life outside of the classroom is not subject to the whims of respondent officials of the University of Nebraska and the good motives of these officials does not erase the unconstitutionality of the mandatory fee system they continue to impose upon the petitioner.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition of Richard Veed for a Writ of Certiorari should be granted.

Respectfully submitted,

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Attorney for the Petitioner

(Member of the Supreme Court of
the United States)

Of Counsel:
PHILLIPS & MURPHY

CERTIFICATE OF SERVICE

Copies mailed to Counsel for Respondents as per Certificate of Service on file.

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 73-1095 September Term, 1972

Richard Veed, Appellant,	)	
vs.	)	Appeal from the United States District Court for the District of Nebraska.
Edward Schwartzkopf, et al., Appellees.	)	

The Court having considered petition for rehearing en banc filed by counsel for appellant and, being fully advised in the premises, it is now here ordered that the petition for rehearing en banc be, and it is hereby, denied.

Considering the petition for rehearing en banc as a petition for rehearing, it is now here ordered that the petition for rehearing also be, and it is hereby, denied.

July 23, 1973

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 73-1095

RICHARD VEED, Appellant,	)	
v.	)	Appeal from the United States District Court
EDWARD SCHWARTZKOPF, et al., Appellees.	)	for the District of Nebraska

Filed: June 27, 1973

Before HEANEY, BRIGHT, and ROSS, Circuit Judges.

ORDER OF AFFIRMANCE

Upon a careful consideration of the record and the briefs of the parties, the Court has concluded that the judgment of the District Court is based on findings that are not clearly erroneous, that no error of law appears, and that an opinion would have no precedential value. For these reasons the judgment appealed from is hereby affirmed on the basis of the memorandum opinion of the trial judge. See Rule 14 of the Rules of this Court.

Costs taxed in favor of the Appellees:

Costs of printing 25 copies of Appellees' brief:	$113.09
Total costs of Appellees for recovery from Appellant in the U. S. District Court	$113.09

NOT TO BE PUBLISHED

A true copy.

Attest: Robert C. Tucker

Clerk, U. S. Court of Appeals, 8th Circuit.

July 30, 1973

APPENDIX C

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

RICHARD VEED,	)	
Plaintiff,	)	
vs.	)	
EDWARD SCHWARTZKOPF, KERMIT HANSEN, KERMIT WAGNER, ROBERT J. PROKOP, ROBERT L. RAUN, ROBERT KOEFOOT, JOHN G. ELLIOTT, JAMES MOYLAN, D. B. VARNER and JAMES H. ZUMBERGE,	)	MEMORANDUM OF DECISION
Defendants.	)	CV72-L-214

APPEARANCES: For plaintiff, Lawrence Murphy
For defendants, Alan E. Peterson

WARREN K. URBOM, Chief Judge

The complaint challenges the constitutionality of the imposition of mandatory student fees at a state university for use in subsidizing a student newspaper, a student association, and a speaking program. Following denial of a request for a temporary injunction, the case was tried on the merits and now is in position for decision.

I.

The relevant facts are not seriously in dispute and have largely been set forth in a pretrial stipulation of facts, although by testimony there was supplementation of the stipulated facts. The plaintiff, Richard Veed, is a 20-year-old citizen of Nebraska who presently is enrolled and continuously since the fall of 1970 has been enrolled for the

fall and spring semesters as a full-time student at the University of Nebraska at Lincoln. The defendants are members of the Board of Regents of the University of Nebraska, the president of the University of Nebraska, and the chancellor of the University of Nebraska at Lincoln.

At the time of registration during each of the semesters in which the plaintiff has been in attendance at the University of Nebraska he has been required to pay, as a prerequisite to enrollment, mandatory student fees in the total amount of $51.50 each semester in accordance with a fee schedule adopted by the Board of Regents. Of the $51.50 paid each semester, distribution has been made by directive of the Board of Regents to various organizations and functions of the university, including the support of certain noncredit activities, such as the writing and publishing of the daily student newspaper, the *Daily Nebraskan;* the support of the activities and operations of the Association of Students of the University of Nebraska (ASUN); and payment of fees and expenses of speakers appearing at the university through the auspices of the Nebraska Union. The defendants who are members of the Board of Regents evidently intend to continue in the immediate future such use of student fees.

During the tenure of the plaintiff as a student at the University of Nebraska, he has paid mandatory student fees in the following categories complained of in this litigation:

The Daily Nebraskan newspaper	$ 6.25
Association of Students of the University of Nebraska	1.50
Nebraska Union, facilities and speakers	30.00

Unallocated student fees	9.75
	$47.50

The *Daily Nebraskan* is a newspaper substantially supported by student fee payments collected at the beginning of each semester, although some of its operating revenue comes from the sale of advertising space. The newspaper is one of general circulation on the university campus and is distributed free of charge to all students. Reported are news of general campus interest, sports news, and editorial opinion directed at events of local, national and international significance. The *Daily Nebraskan* is written and published by students under the general supervision of the Publications Board of the University of Nebraska, which is composed of students and faculty members but has no general editorial veto power over the content of the newspaper.

The Association of Students of the University of Nebraska is the student government of the university. It is structured with executive, judicial and legislative branches. The executive is composed of the ASUN president, the first vice president and the second vice president, elected by popular student vote; the student cabinet; the director of records; and the electoral commissioner. The legislative branch is the student senate, composed of 35 representatives elected by students of the various colleges of the university. The judicial branch is the student court consisting of a chief justice and six associate justices, appointed by the retiring president of ASUN at the end of each academic year. A part of the purpose of ASUN is to represent the student viewpoint, as expressed through its elected representatives to the various governing bodies of the university itself.

Appendix

Throughout the academic year, speakers are invited to appear at the university to speak on a wide range of topics. Funds to pay the fees and expenses of these speakers are provided from the mandatory student fees. Initial speaker selection is made by the Talks and Topics Committee of the Program Council of the Nebraska Union Board. Anyone desiring a particular speaker to appear first consults the chairman of the Talks and Topics Committee. Its recommendation then goes to the Program Council, which then submits its recommendation to the Nebraska Union Board, which has the responsibility of final selection. The Nebraska Union Board is composed of seven students, selected by students, and three faculty members, appointed by the chancellor. The Program Council is composed of nine students; the Talks and Topics Committee is composed of a chairman, who is selected by the Program Council, and other members, who are appointed by the chairman of the committee. Special committees have been appointed to handle specialized topics, such as the World in Revolution Conference of 1971.

The unallocated fee fund is for further extracurricular student activities, whether or not as a matter of individual conscience, expression of political belief, exercise of personal religion, or expression of personal liberty the students desire to subscribe to, associate with, or financially support any of such activities.

No credit hours are granted by the University of Nebraska to any student simply because the student writes articles or editorials for the *Daily Nebraskan*, or simply because the student participates in the activities of ASUN, or simply because the student attends the conferences and speaking engagements sponsored by ASUN or the Nebraska

Union, or any other activity funded by manatory student fees. Many voluntary organizations of students at the university are not funded with mandatory student fees, including the UNL Young Republication organization, the UNL Young Democratic organization, and the UNL Student Bar Association.

The defendants have permitted ASUN to use mandatory student fees for paying private attorney fees for ASUN, for paying travel expenses of certain students to conferences of the National Student Association, and for paying salaries of employees of ASUN.

Mandatory student fees were used to pay the expenses of the 1971 Time-Out Conference on Human Sexuality via the use of fees previously allocated to ASUN and the Nebraska Union, which consisted in part of speakers who held themselves out to the public as homosexual persons and who spoke on the state of homosexuality. In 1971 mandatory student fees were used to purchase a birth control book. On November 2, 1972, five days prior to the November 7, 1972, election involving the candidacy of Carl T. Curtis for the office of United States Senator, columnist Jack Anderson spoke on the Lincoln campus of the University of Nebraska as a part of a public speaking program of the Nebraska Union, funded with mandatory student fees.

The plaintiff sharply disagrees with the philosophies expressed by many of the speakers who have been invited to speak at the university and is in substantial disagreement with the editorial philosophies generally adopted by the *Daily Nebraskan.* His concern, however, is not that the *Daily Nebraskan* is published or that the speakers ap-

pear, but that fees imposed upon him are used for those purposes without, he claims, a choice on his part. In fact, he quite regularly has read the *Daily Nebraskan* and has attended some of the conferences and speaking appearances, all voluntarily and without compulsion. Neither the university as an entity nor any of the defendants exercises any significant control over the selection process of speakers. Neither the university as an entity nor any of the defendants seeks to make selections of editors of the *Daily Nebraskan* or of speakers on the basis of political or personal philosophy. There is nothing to show that the university, as collector and assessor of mandatory student fees, or any of the defendants has used those fees in an attempt to support or advance any particular political or personal philosophy.

II.

Although the parties in the final pretrial order have listed a number of issues which they separately contend to be controverted issues of fact and law, I am persuaded that the essential issue may be simply stated as follows: Is a state university constitutionally prohibited from providing a forum for the expression of political and personal opinions with financial support of mandatorily assessed student fees? In my judgment the answer must be in the negative.

The plaintiff argues that requiring him to expend monies for the support of a student newspaper and to pay fees of speakers who appear on the university campus to express political or religious philosophies repugnant to his own is to force him to become associated with such philosophies in violation of his right to freedom of speech, free-

dom of religion, freedom of the press, and freedom of association.

The difficulty with the plaintiff's position is that it assumes a fact which finds no support in the evidence: that in its program of supporting extracurricular speakers and a student newspaper the university assumes the role of advocate for the particular philosophy expressed by the speakers and the newspaper. The evidence is to the contrary. There is no direction as to how the fees must be spent nor is there any form of editorial censorship exercised over the newspaper. Indeed, such control by the university would raise grave constitutional questions. See *Brooks v. Auburn University,* 412 F. 2d 1171 (C. A. 5th Cir. 1969); *Trujillo v. Love,* 322 F. Supp. 1266 (U. S. D. C. Colo. 1971).

Within wide limitations a state is free to adopt such educational philosophy as it chooses. The Board of Regents of the University of Nebraska obviously has embraced an educational philosophy that the education of students extends beyond that which takes place in the classroom under the tutelage of instructors and professors. The practices of the Board of Regents indicate that it considers as relevant to the educational process extracurricular opportunities for students to be exposed to speakers outside the classroom who may express widely divergent opinions on a number of topics. It clearly has concluded to adopt as a part of the educational process the publication and distribution of a student newspaper. Whether such activities in fact are educational in nature is for the Board of Regents to determine, subject only to the limitations that the determination be not arbitrary or capricious and that it not have the effect of imposing upon the student the

acceptance or practice of religious, political or personal views repugnant to him or chilling his exercise of his constitutional rights. As a matter of law and of fact, there has been none of those limitations violated by the university or its officials in this case.

The plaintiff has remained free to associate himself with those political, religious and personal philosophies which most closely conform to his own. No prior restraint has been imposed upon him in the exercise of his constitutional rights, nor have any sanctions been visited upon him because he has chosen to exercise his rights. The First Amendment guarantees that students shall be free to express themselves, as long as the expression does not interfere with the orderly conduct of the process of education. *Tinker v. Des Moines School District*, 393 U. S. 503 (1969). Similarly, the First Amendment protects the student from official compulsion to adopt or verbalize any particular political or personal philosophy. *Board of Education v. Barnette*, 319 U. S. 624 (1943). But a university is not constitutionally prohibited from financing through mandatory student fees programs which provide a forum for expression of opinion, be that expression oral or written.

Our states, through their colleges and universities, must retain the freedom and flexibility to put before their students a broad range of ideas in a variety of contexts. The wisdom or political desirability of the specific route chosen is not a question to be determined by the courts. Arguments on that point must be directed to a more appropriate forum.

This memorandum of decision shall constitute findings

of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

Judgment will be entered for the defendants.

Dated January 12, 1973.

BY THE COURT

Warren K. Urbom

Chief Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

RICHARD VEED, Plaintiff,	)	JUDGMENT
vs.	)	
EDWARD SCHWARTZKOPF, et al, Defendants.	)	CV72-L-214

For the reasons stated in the memorandum of decision of today,

IT HEREBY IS ORDERED AND ADJUDGED that judgment be and hereby is entered for the defendants.

Dated January 12, 1973.

BY THE COURT

Warren K. Urbom

Chief Judge